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TO THE HON. SECRETARY OF THE TREASURY.

WASHINGTON CITY, *March* 20, 1849.

SIR: I beg leave most respectfully to call your attention to an act of Congress, approved the 10th of August, 1846, in the following words:

"Joint Resolution declaratory of the act passed on the twenty-third August, eighteen hundred and forty-two, entitled an act for the relief of Charles F. Sibbald.

"*Resolved, &c.*, That in *carrying into effect* the act entitled an act for the relief of Charles F. Sibbald, passed twenty-third August, eighteen hundred and forty-two, *the Secretary of the Treasury of the United States*, be, and he is hereby, authorized and *required to audit and liquidate the claims and demands of said Sibbald*, upon *principles of law and equity*, and in such manner as to *secure said Sibbald an indemnification for the injuries and damages sustained* by him, *occasioned* by the interference of the agents of the Government with his property and rights, and on such proofs as are usually received in similar cases by the accounting officers of the Government."

And I have respectfully to refer you to the enclosed, as showing that the authority thus delegated to the Secretary of the Treasury of the United States, as to the rights comprehended and conferred and vested in me by this act of Congress, remain wholly unexecuted. It therefore becomes my duty respectfully to ask, at your hands, the execution of the law, in order that the "claims and demands" comprehended in the act, laid before Congress, and made on the law and evidence established by Congress, shall be audited, liquidated, and paid.

I have the honor to be, sir, most respectfully,

Your obedient servant,

CHARLES F. SIBBALD.

CLAIM OF CHAS. F. SIBBALD, OF PHILADELPHIA.

The question most respectfully presented for the consideration of the honorable the Secretary of the Treasury of the United States now is, what is the position of the said claim, under the act of the 23d of August, 1842, and the supplemental declaratory resolution of the 10th of August, 1846?

This is a claim for the destruction of property and damages, as laid before Congress, and asserted by a citizen of the State of Pennsylvania, on the Government of the United States, as contra-distinguished from other claims, in being founded upon law and testimony established by Congress, as regards the accounts, "*claims, and demands*," *&c.*

The evidence of the case establishes that the claimant, a resident merchant and native of the city of Philadelphia, was the owner of a Spanish land grant in Florida, conceded on the condition of the construction of a water Saw-mill, which was built soon

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after the grant was made; that in accordance with the provisions of the grant the land was located and surveyed in several detached places, comprehending 10,000, 4,000, and 2,000 acres, which was covered with yellow pine, red cedar, live oak, and other wood, while a large portion of the lands were valuable for agricultural purposes. That in order to render this estate productive, and following up the conditions of the grant, the claimant, from his commercial domicil in the city of Philadelphia, at vast cost, entered on the construction of several steam saw-mills of immense power and capacity, to saw up *his pine* timber growing on the 10,000 acre tract, which, being situated on the immediate seaboard, afforded a position for business unsurpassed in health, which vessels of large burden could approach; and induced by the treaty with Spain, which admitted Spanish vessels with immense advantages, in entering Spanish ports, he established a commercial depot on said tract, with other various extensive business, and also entered into contracts to furnish for the Navy Department several hundred thousand dollars worth of live oak timber, to be taken as far as practicable from these lands: and for the execution of which contracts he was placed under heavy bonds. That while his fortune and commercial reputation were thus embarked and dependent, his entire business was broken up by officers of the United States, who entered upon the lands, under general authority to consider all Spanish grants as public lands until otherwise determined by judicial decision or acts of Congress, by which acts of the Government he was prevented from cutting either the timber to supply his *saw-mills*, or *his* live oak *contracts*; and, as a *direct*, *necessary*, and *unavoidable consequence*, that his saw-mills, and their appurtenances, were wholly destroyed by "dilapidation and decay"—his contracts prevented from being execute'—his entire investments sunk—his *whole* estate *sacrificed* and lost, and the claimant overwhelmed in difficulty and ruin.

These facts, as derived from the testimony, were substantially detailed and set forth by the claimant in his petition to Congress for redress, soon after the grant was confirmed by the Supreme Court of the United States, on the 6th of February, 1836.—(*Sibbald* vs. *the United States*, 10 *Peters*.)

On this statement of facts, supported by a correspondence with the Treasury and Navy Departments, the Attorney General, and other officers of the Government, a resolution was passed by the House of Representatives requiring the Secretary of the Treasury to take further evidence to develope the case. This duty was performed at the several points of examination, by the District Attorneys of the United States, and the Consul in Cuba; the evidence, including that of several officers of the Government, returned to Congress, when, after an elaborate examination made by both Houses, they united in an act for the relief of the claimant, which was *unanimously passed*, accompanied by a detailed report setting forth the facts thus established.

The following is an extract of the act of the 23d of August, 1842:

"*Be it enacted*, &c., That the Third Auditor of the Treasury, under *the direction of the Attorney General*, be, and is hereby, di-

rected to ascertain the actual damages which Charles F. Sibbald has sustained, and would be entitled to recover, upon principles of law as applicable to similar cases, by reason of the interference of any agent or agents of the United States, with the *use*, possession, or enjoyment of *his lands, timber, mills, or other property, &c.*"

By this act all the damages sustained by reason of the interference with the *use*, possession, or enjoyment of *his lands, timber, mills, or other property*, are directed to be ascertained, and paid by the Secretary of the Treasury, while the report of the House, which accompanied this act, was so expressive of the wrong inflicted, and the reparation which should follow to indemnify that wrong.

Nevertheless, the claimant was compelled to apply to Congress for an explanatory act, which, like the first, was unanimously passed, accompanied by a report of the Judiciary Committee of the Senate expressive of its designs, and also their views as to the designs of the former act, which the claimant had maintained in his second petition, and embodied the report of the House of Representatives as showing that the first act merely left a calculation of his accounts as the performance of the duty of the Auditor; and certainly the following determines that question:

"Joint Resolution declaratory of the act passed twenty-third August, eighteen hundred and forty-two, entitled 'An act for the relief of Charles F. Sibbald.'"

Resolved, &c., That in carrying into effect the act entiled an act for the relief of Charles F. Sibbald, passed twenty-third August, eighteen hundred and forty-two, *the Secretary of the Treasury of the United States* be, and he *is* hereby authorized and *required, to audit and liquidate the claims and demands of said Sibbald upon principles of law and equity, and in such manner* as to secure to said Sibbald an indemnification for the *injuries and damages sustained* by him, *occasioned* by the interference of the agents of the Government with *his* property *and rights*, and on such proofs as are usually received in similar cases by the accounting officers of the Government."

This is the authority delegated by Congress without a dissenting voice, with the accounts, "*claims, and demands*," as submitted, laid before the National Legislature a second time. The claimant had from the earliest moment laid his claims and demands before Congress; the account or approximated statement in the book of evidence will prove this fact. The laws of damages, supported by decisions of the Supreme Court, were also laid before Congress to sustain the accounts as then made.

Congress, in order fully to develope the case, and to ascertain the amount of the damages, directed the Secretary of the Treasury to take evidence, which was done on the universal principles of law, that the despoiler is obliged not only to restore the property, but also the fruits or profits it would have yielded until reparation or indemnity is made. The interrogatories made at the Departments, it will be seen, incorporate the law with that evidence, by requiring the witnesses to respond as to the destruction of property, and the *destruction of the fruits or profits*, which evidence, thus taken, was returned to Congress, approved and affirmed, in its unanimous

action, which evidence cannot be severed or separated. Thus conclusively establishing, that Congress has furnished the data on which "the claims and demands" are founded, which were before the Legislature, and which the Legislature ordered to be audited, liquidated, and paid. Let these principles applied to the evidence produce what it may, it is respectfully asserted, that these are the rights vested by Congress in the claimant.

And what has been done to carry "*into effect*" the comprehensive provisions of the two acts passed for the relief of the claimant, while his sufferings and losses have been so deeply aggravated by delay?

This question is not difficult to answer, as the following will evince, that nothing whatever has been done pursuant to the law.

The late Secretary of the Treasury referred the case to the Comptroller, as the claimant had supposed merely *to calculate*, "audit, or liquiate" "*his claims and demands.*" But after making various allowances for the destruction of the saw mills, their "*use*" and operation, the store, &c., &c., the Comptroller concluded to go behind what his principals had in the clearest language, by their reports, declared determined, and raised a question as to the *interference* on which these allowances had been founded by him, and finally proposed to allow the claimant for what he supposed the claimant might, if ejected or turned off his own property, have procured the logs of others to operate his saw mills, *for one year* only; thus *avoiding the damages for their destruction*, their "*use*" and operation, and the payment of all damages resulting from the overthrow of the entire dependent business.

Thus the Comptroller, whose duties are always arduous, may have overlooked the testimony, by proposing to allow the claimant for what he, the *Comptroller supposed* the claimant could, if *ejected or turned off of his own property*, have procured the timber from others to operate his saw mills for one year, while the evidence, as annexed, and the reports of Congress, show beyond all doubt, that no such alternative existed. That the prohibition of cutting the timber was extended to all Spanish grants. The late Secretary of the Treasury, on reviewing this report, at once put down this question of *interference* thus raised by the Comptroller, and whom, it will appear, subsequently acquiesced in these views, as the report of the Secretary will evince, so that in fact these doings, simultaneously made, open the case; for the Comptroller says, on the *proviso of an interference*, the claimant is entitled to be paid *for the destruction* of his saw mills, &c., for their "*use*" and operation, &c., &c., while the Secretary demonstrates, that this interference lasted uninterruptedly for many years.

Therefore, the late Secretary of the Treasury, on what was thus brought to his notice, says in his report, dated the 2d June, 1847, that "*in the event of the logs of others being used, instead of the timber of the claimant*, that timber would still be left standing on the land as his property; therefore a deduction of one-half should be made on that account, which would bring down the last mentioned sum to $2,133 82. And that—

"By the original and supplemental act for the relief of Mr. Sibbald, it would appear to have been the *opinion of Congress*, that

the interference may have continued from 1828 to 7th February, 1836, at which time the title to the said property was confirmed to the said Charles F. Sibbald by the Supreme Court of the United States." The Secretary then continues to say: "I concur with *you as to the time* of the commencement of *the interference*, namely, about the 1st July, 1829; you have, however, allowed damages for the interference of *one year only*, whereas *the law* would *seem to contemplate, that the interference continued from its commencement uninterruptedly up to the 7th of February*, 1836." "*Upon the careful examination of the testimony, I do not find any evidence that the interference was withdrawn, interrupted, or discontinued*, up to the 7th February, 1836." "If there be any evidence in the case which may have been overlooked by *me*, you will please refer me to it with your views thereon. If there be no such evidence, you will please to allow damages at the rate before stated, of $2,133 82 per annum, for the whole period of the interference," *with interest*, &c. But this decision of the Supreme Court did not restore the claimant to the possession of the property which was previously sacrificed by the Government. By this report of the late Secretary of the Treasury the following points are most conclusively established, as they were years since by Congress, as the reports will evince.

First. That there was an "*uninterrupted interference*," which deprived the claimant of the use of his property from *July*, 1829, *to the 7th of February*, 1836, when his title to the land was confirmed by the Supreme Court of the United States.

Secondly. That the acts of *Congress contemplate* this "interference," and which is sustained by the reports of Congress.

Thirdly. That the Comptroller harmonized in these views which therefore reconciles his report on this point of difficulty, *as to the interference*, as entertained, and as far as that report is considered, *would throw it open* for his previous allowances *for the destruction* of the mills, property, and business, made on the proviso of an interference, or such as conform to the law and evidence on those heads.

The Comptroller made these allowances *on the proviso* of an interference, the Secretary determined as to the interference, the Comptroller, it seems, acquiesced in this decision, so as the case stands on these doings, *it is thrown* open *by* this simultaneous action. But the allowance, as finally made by the Comptroller, can neither be sustained under the law or testimony, *as will* be seen.

By the act of the 10th of August, 1846, "the Secretary of the Treasury is required to audit and liquidate *the claims and demands of said Sibbald* upon *principles of law and equity*," &c. "The *claims and demands of said Sibbald* are "required" to be "audited," &c.

But here is an allowance proposed by the Comptroller for what the claimant, *he had supposed*, could procure "*the logs of others*" to operate his saw mills. How can such an item as this be allowed? *Did the claimant ever make or assert such such a "claim or demand" as this? Is there any evidence whatever to sustain such an item? Any entry, book account, or voucher whatever of any description? Any law, or principle of law*, on the ground that a person is *turned off*, or ejected from his own property, that could, for an item, *which had no existence* in fact, be *awarded, allowed, or paid?* Thus the

only action of the Department under the act of the 10th August, 1846, (by inadvertence,) *is illegal.*

Is there any law or principle of law on the admitted fact, that a person is *turned out* of *possession of his own* property many years, that could compel him to seek the property of others to support his undertakings? Is not the legal answer "you turned me out of possession and kept me out," (*as you have demonstrated,*) so "you must pay the damages." While such a pretension as this cannot for one moment be sustained, it will be conclusively shown by reference to the testimony herewith submitted, marked A, that *no such alternative existed*, that evidence *incontestibly* proves that no such timber *was cut, procured*, or *could be obtained*, that every attempt to procure the timber "*of others*" was resisted by the Government, "that thousands of logs" *thus seized* "were *left to rot in the woods*," and that this is sustained *by Congress*, as one of the "facts established" by the report of the House of Representatives. Neither for one moment can the other proposition *stand before the evidence* with regard to the *timber left on the land*, as the testimony annexed, marked B, will evince.

On this proof, asserted by such authority, of this "*continued interference*," which *was not withdrawn, interrupted, or discontinued* until the Supreme Court confirmed the title to the land, and which "interference is contemplated by the act and supplemental act," as the inevitable consequences "*directly flowing*" *from these acts of the Government, are shown by the evidence and the reports of Congress, to have resulted in the total destruction of the saw mills, buildings, and equipments, their use and operation, and the despoiliation of the undertakings of the claimant generally*, it would seem wholly unnecessary to stop to argue or inquire *what are the rights vested in the claimant or duties now* enjoined on "*the Secretary of the Treasury of the United States*" *in carrying into effect* the provisions of *the act of the 23d of August*, 1842, and the Joint declaratory Resolution of the 10th of August, 1846, passed for the relief of the claimant.

In the petition to Congress for restitution for the aggression, the claimant had alleged that his entire *business pursuits were overthrown and destroyed by the Government.* Congress directed the Secretary of the Treasury to take evidence to develope the case; *that duty was performed, that evidence returned to Congress. The laws of damages as assumed by the Treasury Department*, on the the law of the universe, *approved by Congress*, and affirmed by its action and debates upon the case; these "*claims and demands*," as made upon *this law and evidence laid before Congress, read before Congress, debated, and unanimously sanctioned* and approved, and Congress after an elaborate examination *of the whole case, with the claims and demands as asserted before them*, again and again satisfied of the wrong inflicted, and determined to make reparation for that wrong, direct the Secretary of the Treasury in the very words of the act and Joint Resolution, *to do what!* "*To carry into effect*" and "*to audit and liquidate the claims and demands of said Sibbald upon principles of law and equity, in such manner as to secure said Sibbald an indemnification for the injuries and damages*

sustained by him, occasioned by *the interference* of the agents of the Government with his *property and rights*, on such proofs as are usually received in similar cases by the accounting officers of the Government." *These are the words of the law.*

It would after this be quite unnecessary to stop to argue that the claimant *built those mills*, entered into those contracts, engagements, and undertakings, and embarked his fortune in life to use his own property, and not "the property of others;" and as it has been conclusively and incontrovertibly shown and admitted by the late Secretary of the Treasury, and also by Congress, as their reports evince, that he was prevented from using that very property that alone induced him to embark in those undertakings which were wholly arrested and destroyed. There is no color or construction of law that can impair or avert for the consequences which have followed on the losses, "*injuries and damages*" *sustained* or "*occasioned*" in the wrong inflicted by the Government in the "*uninterrupted interference*," as declared by the late Secretary of the Treasury, and Congress, in the acts passed for his relief. And it would have been wholly unnecessary, in order to establish these existing rights under the law, to show, or by a word to prove it, that he was *debarred* from obtaining the property "*of others*" to support his undertakings.

His petition to Congress, the reports of Congress, the evidence taken by Congress, and the law, in the two acts passed for his relief, show that he entered into those pursuits, engagements, or undertakings to use his own property, and not the property of others, which no one will attempt to controvert or call in question, or attempt to assume, that there was an existing obligation after being turned off; that he was compelled to procure the property of others (which it is proved he could not do) to support his undertakings. The claimant only asks that the rights conferred in the acts passed for his relief shall be carried "*into effect*." *That the evidence shall be justly applied to the law* in the measure of damages established by Congress and the Treasury Department. That his accounts are made upon the law and principles thus established. Upon evidence thus taken, no one will attempt to controvert.

The claimant would, with these views, with the most profound respect, submit that the law remains wholly unexecuted; that these doings of the Department have, in the united action of the Comptroller, and in what has been demonstrated by the late Secretary of the Treasury, divested the case of all difficulty; and would now, therefore, desire to show what was his actual position and commercial standing in life, when the Government thus destroyed his fortune—as contra-distinguished with his present position—in order that it shall be seen, that whatever result the measure of damages as applied shall be, that no pecuniary recompense can compensate for his sufferings and losses for eighteen years of the best days of his life.

Since the report of the Comptroller was made, a minute and elaborate examination has been made of his books—exhibiting therein a schedule of the state of his affairs at two distinct periods; the one when he commenced these undertakings, induced by

his Floridian possessions; the other at the date when the Secretary of the Treasury has declared the disturbance to have been complete—"about the 1st July, 1829."

The first of these will evince that when the claimant commenced these operations, the extent of which too goes to establish the fact, and without which he could not have undertaken them, that he enjoyed a high commercial position, while his property was valued at exceeding one hundred thousand dollars. Which his books prove, as the schedule will evince, was clear of all incumbrance.

The second, that when his large mill, with "48 saws," was ready to operate, at the date which has been fixed by the late Secretary at which the disturbance was complete on the mill tract, to wit: "about the 1st July, 1829," his total indebtedness did not exceed $38,216: that his assets, including the $16,000 which would have been paid by Mr. Grice but for the *interference*, *would have more than liquidated the indebtedness, so that his whole landed estate and mills would have been free*; *besides an income then*, as proved by nearly thirty witnesses, from his *mills*, *contracts*, *timber*, *stores*, *lands*, *ship-building*, *Cuba trade*, *&c.*, beyond which, as the books evince, an unbounded credit with many of the largest and most respectable commercial houses in this country, to compass any prudent object that he might desire, mercantile or otherwise. Such was the position of the claimant when the Government broke down, swept his *entire estate—including the lands confirmed by the Supreme Court—from him*; left him for a period of eighteen years of the best days of his life, to struggle with these consequences; *daily*, it may be said, to undergo the tortures of mind and distress in every way and shape that can be conceived, with executions and persecutions, until now, with interest compounded, this indebtedness forced upon him by the Government, has accumulated and multiplied, frequently at the rate of two and three per cent. per month, to an extent almost beyond belief.

These facts being supported by the evidence, and proving that the law remains to be executed, let us again revert to show how far Congress has gone in establishing the law of the case, as well as the Departments'. It is repeated that from the earliest moment the claimant asserted his "*claims and demands*," and *laid them before Congress*—and it has been already said that these accounts were made upon principles of law, decided in several cases by the Supreme Court and laid before Congress, as well as on the universal law, as adopted by all civilized nations in cases of damages,—showing that the despoiler is bound not only to restore the property, but also the fruits or profits it would have yielded, until such reparation shall be made; without this the claimant could not be made whole in fortune, and that these principles were argued in the Senate where the accumulative account was read, and met unanimous approval—they cannot be controverted. Also, that the Secretary of the Treasury had incorporated these principles of law, *with the evidence* taken, as the law of the case, as will be seen by the interrogatories prepared at the Treasury, the result of which was returned to Congress and met its unanimous sanction and affirmation.

Mr. Legare, the Attorney General, under special authority dele-

gated, also laid down this law, in directing that all "*such damages* should be allowed *as directly flow in the natural and ordinary course of things, from the trespass or omission*," and this Attorney General gave an illustration of the law by directing that, "if it be proved that the interference of a Government agent directly and necessarily stopped the working of the mills, or produced their destruction, the measure of damages must then be ascertained *on the probable nett proceeds of the Mills*, for the time during which it was so prevented from working, and the true value of the mill, *not the* price of (its) *construction*."

The application of these instructions to the views entertained by the report of the Secretary, of an "*uninterrupted interference*" in cutting the timber to work the mills, would "*directly and necessarily*" meet these items of loss.

These rules have been too often and too extensively applied by Congress, as well as by the Departments, and, under the Convention with Mexico, by our judicial tribunals, as shown, and of such universal application that reference to the precedents cited, and which will be found among the printed documents, of their application under the English, French, and Spanish authorities, that they cannot be questioned or controverted. Congress legislated with the accounts made on these rules of law before them, nevertheless have required, with a decision and determination of purpose unprecedented, that "*the claims and demands*" of the claimant thus asserted shall be "audited, liquidated, and paid," notwithstanding the large amounts brought to view before Congress, and which too were laid before the country. Thus Congress has assumed all responsibility—have shown the facts established, as to the wrong inflicted—taken evidence *as to the extent of the wrong, and determined and established the measure of the damages*, "to secure an indemnification" for that wrong. The doors of the Treasury are thus widely as the law thrown open, for the payment of "claims and demands" *in fact made out by Congress.*

The remaining question is, does any barrier exist to the faithful performance of the duties, enjoined under the acts passed for the relief of the claimant, in consequence of this action of the Departments, thus shown to have been made under such a misconception of *the facts* and the law, and for no "claim or demand" *which existed*, or had ever been asserted by the claimant or Congress.

Numerous instances have occurred where the decisions or opinions of one Secretary have been reconsidered and reviewed, and awards made by his successor.

The Supreme Court of the United States has decided this right of late, which will be found in the 15th vol. Peters' Reports, p. 401, the United States *vs.* the Bank of the Metropolis.

Mr. Justice Wayne there delivered the opinion of the Court, that "*this right in an incumbent of reviewing a predecessor's decisions, extends to mistakes in matters of fact*, arising from errors in calculation, and *to causes of rejected claims, on which material testimony is afterwards discovered.*"

It is respectfully submitted, that as "the Secretary of the Treasury of the United States" has been delegated with special authority

in this case, to perform certain acts in auditing, liquidating, and paying "claims and demands" which remain *wholly unliquidated*, no such authority as this can be necessary. Nevertheless the following certainly present testimony, since "discovered," to have a very important bearing on the allowance of the Comptroller, as sanctioned by the late Secretary of the Treasury.

First. To the "*mistakes* in the matters of fact," discovered and herein developed.

Second. It is *discovered* that the books kept in Florida completely upset *this allowance* as made for "*the logs of others*" had to operate the saw mills, on showing that only *three thousand two hundred and seventy-nine* logs were had from *all sources* to operate saw mills as sworn to by Mr. Colt, requiring one hundred and twelve logs per day, about one month's supply; whereas the Comptroller proposed to allow for six year's purchase of logs, believed to exceed one hundred thousand, although it was proved that the mills had not cut a log of timber for a period of five years previous; which allowance as made, is unsupported by law, testimony, or any authority whatever. So the "proof discovered" establishes an illegal act performed, not authorized or sanctioned by the law or testimony in the case.

Third. That the reports of Congress show the fact established, that all Spanish grants were deemed and treated as public lands, and that no timber whatever was permitted to be cut or taken to operate the saw mills, and their direct *destruction* thereby, which is supported by the evidence now before the Secretary of the Treasury.

Fourth. That the Supreme Court of the United States, 10 Peters, show that these very rights in *lands, timber, and mills* that were thus assailed, were protected by treaty stipulations, and that the claimant was prosecuting the very purposes of his grant on grounds of which it was confirmed, when he was thus disturbed and his fortune ruined.

Fifth. That the whole real estate and the personal estate and mills appended, confirmed by the Supreme Court, were so involved by the action of the Government as to divest the claimant of the *whole property*, which has been sacrificed and *wholly lost to him*—which has not heretofore been asserted—so that the decision of the Supreme Court did not restore the claimant to the possession of the property.

Sixth. That the grant, from Spain secured the rights of the claimant to cut the timber as is stipulated in the grant, that in stopping the cutting of which the Government laid the axe at the very root of his undertakings, and *destroyed the whole.*

Wherefore the claimant most respectfully appeals to the *Honorable "the Secretary of the Treasury of the United States"* to "*carry into effect*" the act and supplemental act passed for his relief, and as "authorized and required," "to audit and liquidate the claims and demands" upon "principles of law and equity, and in such manner as to secure him an indemnification for the injuries and damages sustained by him, occasioned by the interference of the Government with his property and rights, on such proofs as are usually received in similar cases by the accounting officers of the Government."

In conclusion, the claimant begs reference to the accounts, "claims, and demands," as submitted to the Department, to the law

and evidence to sustain these accounts, and to the statements as laid before the country.

The claimant also begs reference to the decision of the Supreme Court, 10 and 12 Pets., Sibbald *vs.* the United States, and Arredendo *vs.* the United States, 6 Peters; whereby the violation of solemn treaty stipulations and obligations will be made manifest in the aggression of the Government on those very rights of property, thus declared by the Supreme Court of the United States protected by the treaty with Spain, and in violation of the Constitution, which guarantees to every citizen of the country the protection of the sacred rights of property, and the lawful exercise of his rights. All of which is most respectfully submitted to the Honorable the Secretary of the Treasury of the United States, under the act of the 10th of August, 1846.

CHARLES F. SIBBALD.

WASHINGTON CITY, *March* 20, 1849.

The undersigned, having read the aforegoing statement, are of opinion:

1st. That the act of Congress for the relief of Charles F. Sibbald, and the joint resolution explanatory of the same, have not been executed by the late Secretary.

2d. That by these, the rights of Charles F. Sibbald to indemnity from the United States for all damages sustained by him in his various employments, on his lands in Florida, from the interference of any officer of the United States with these employments, or any of them, is distinctly recognized.

3d. That the late Secretary of the Treasury has also recognized this interference, its duration and extent, but has confined himself to a manifestly erroneous mode and measure of indemnity for the damages sustained by Charles F. Sibbald, in one only of these employments.

4th. That in relation to all other damages, recognized by the act and joint resolution before referred to, they remain unexecuted.

JOHN MACPHERSON BERRIEN,
DANIEL WEBSTER,
Of Counsel with C. F. Sibbald,

WASHINGTON, 22*d March*, 1849.

A.

Proof taken from the evidence, establishing, that all unconfirmed Spanish grants were ordered to be treated as public lands by the Departments in Washington.

That these orders were actually enforced, so that the claimant, who it is seen the late Secretary has established, was prevented by an "uninterrupted interference" from cutting the timber to supply the saw mills, was also debarred from obtaining it elsewhere, and the direct destruction of his saw mills, their use and operation, &c. thereby, with his entire dependent business.

1. The United States District Attorney, sworn, who says, that "by instructions received by him from George Graham, Esq., Commissioner of the General Land Office, bearing date August 14, 1828, a copy of which is herewith enclosed, it will appear that *all lands claimed under Spanish grants* then remaining unconfirmed, were considered public lands, and to be treated accordingly.—*Book of Evidence, page* 178, *5th Interrogatory.*

Pursuant to previous instruction the District Attorney gave the following notice in the "Florida Herald:"

U. S. Attorney's Office,
St. Augustine, 17th February, 1828.

"The undersigned has received instructions to prevent and *punish* the cutting of *valuable timber* upon the public lands; these instructions extend not only to '*live oak and cedar timber, but to timber of every description* taken from the public lands for the purpose of shipping, the use of saw mills,' &c. It is understood, however, that these instructions do not apply to timber for fuel, or plantation purposes."—*See appendix, Book of Evidence.*

2. John Rodman, Esq., Collector of Customs at St. Augustine, says, that "the District Attorney has given Mr. Acken, (the Government agent,) his written opinion, that all the grants for mill seats, until confirmed by the Government, or decided by the Judiciary as valid, are to be considered as public property of the United States, &c.—*See page* 21.

Mr. Acken, the agent of the Government commissioned by the Navy Department, thus wrote the Secretary of the Navy:

Washington, *September* 23, 1828.

"It will be well for the Secretary of the Treasury to give instructions to the different Collectors of Florida, as well as the Collector of St. Mary's, Georgia, whose district extends to Nassau river, *to permit no vessel to clear* with *live oak or any other timber*, without a *certificate from each individual* from whose land it was cut, and the particular place from whence shipped, stating the particular tract, and whether it has been confirmed by the Board of Land Commissioners, *or otherwise.*

This order, it will appear, was accordingly given, as the following letter from the Collector of Customs to the claimant will evince. Mr. Rodman, the Collector at St. Augustine, thus wrote the claimant: "I am expressly directed by the Secretary of the Treasury to seize all timber cut upon these lands, the Government consider *all lands* in Florida, the claims for which have not been confirmed, as public lands.—*Page* 23.

The stern application of which is seen in the seizure and condemnation and sale of the brigantine Planter and her cargo, condemned as forfeited by the United States Circuit Court of Florida, in taking a cargo of timber from an unconfirmed Spanish grant, where the Judge declares, by the laws in force a claimant is only a tenant at will to use "320 acres of land by consent of the Secretary of the Treasury, not to commit waste."—(*See decision, pages* 256 *to* 260, *United States* vs. *brigantine Planter and cargo.*)

See letter from the District Attorney urging a relaxation of the

general instructions, "so as to sanction the taking of pine timber for the use of saw-mills," communicated in a letter from the Commissioner of the General Land Office to the Secretary of the Treasury, page 211.

See reply of the Secretary of the Treasury: That "no sufficient reason is perceived for a further modification of the general instructions relative to the preservation of the public timber in Florida," page 211.

See letters from claimant to the Attorney General, Secretary of the Treasury, Secretary of the Navy, Collector of Customs at St. Augustine, Register of Public Lands, &c.

8. Mr. George Colt, book keeper at the mills, says: "When I went there in 1829, a very large steam saw-mill was erecting, with eight gangs of saws. It has sawed as many as 112 or 114 logs per day in twelve hours. 112 is the number I believe that was sawed in one day.

"Mr. Acken was at the mills several times in the month of June, and at one time particularly drove the negroes off that were employed in cutting logs from the woods, where they were at work, by threats of flogging, in consequence of which the negroes returned to the mill. All further attempts to cut logs was abandoned in consequence of the interference of the Government agent.

"Mr. Acken some time in the month of June, I think, left the country for Washington; there was another agent appointed in the place of Mr. Acken, who it was understood by all at the mill would carry out the course pursued by the former agent, which prevented any further attempt at cutting mill logs on Mr. Sibbald's grant. I know that all mill grants not confirmed by the Government of the United States were treated as public land.

"*The people generally in that neighborhood were stopped from cutting mill logs at that period.* There were no mill logs brought to that mill from January, 1829, to July, 1829. I have to-day refreshed my memory by examining the account books kept by me at that time. There were no mill logs charged or credited within that period in the mill accounts. These logs brought after July were cut on land known as American donation. They were cut by Mr. Sully and Mr. Warren, because they could not be cut off of Mr. Sibbald's grant." This donation was given of claimant's land, 500 acres, to Watson.

By the letter of Mr. Snowden it will be seen that the whole stock of logs for saw-mills, as sworn to by Mr. Colt, requiring 112 logs per diem, when ready to operate, was 500 logs, whereas the books prove the fact that a former mill erected, prior to the interference, requiring about 20 logs per diem, is shown to have a stock of 2,766 logs on hand when finished, which, as Gen. Patton says, "go to show conclusively that the interruptions were enforced in full."

Mr. Colt says, that Mr. Sibbald's whole business was broken up there, I attribute to the interference of the Government agent. Mr. Sibbald was forced to abandon the business until the land claims were confirmed. I was there until the final abandonment of the mills and mill property.—See appendix of book of evidence.

9. See evidence of Samuel Grice, that he was prevented cutting 100,000 cubic feet of timber, and paying claimant $16,000 clear profit, which is confirmed by an allowance made, but *yet remaining in the Treasury;* also, that the business of the said Charles F. Sibbald was destroyed in its various branches and details by being dispossessed of his property in the manner aforesaid; p. 34, and in answer to the 15th interrogatory, same page, Mr. Grice says, I do not know or believe any other cause existed for the destruction of the business of the said Charles F. Sibbald, except the interposition of the officers or agents of the United States, aforesaid. See also, answers of Charles Snowden, John Gibson, John Rodman, Judge Bethune, W. J. Mills, George Colt, &c., to the same interrogatory, substantially in the same words.

10. William Carlyle, Engineer, swore thus: He (claimant) was deprived all the time I was there, of cutting saw logs and live oak, and continued to be so when I left there; page 46, 4th interrogatory.

11. Peter R. Walker, wheelwright and engineer of the mills, swore, that Charles Sibbald could not cut the timber off of the lands, being prohibited by officers of the United States; page 39, 3d interrogatory.

12. William L. Newbold swore, that he abandoned his mills in consequence of the acts of the Government depriving him of the use of his property; see page 51, 6th interrogatory.

13. Col. John Warren swore, that he knows that Mr. Sibbald was prevented from cutting live oak and pine from his mill tract, by Mr. Acken, a Government agent, page 121, 3d interrogatory, and that in his (witness's) opinion, Mr. Sibbald's business was destroyed in the manner aforesaid, by the acts of the Government; page 124.

14. Lewis Fleming, Esq., swore, that Wm. D. Acken, agent of the United States, told witness that he had stopped Mr. Snowden, the agent of Mr. Sibbald, from cutting pine timber on Mr. Sibbald's mill grant, and it is strongly impressed on his (witness's) mind, from the circumstance that he wished to cut some timber from a tract of land which he (witness) then owned, near St. Mary's river, but Mr. Acken told him if he did so, that he (Acken) should seize the timber so cut, &c., and that Mr. Sibbald was compelled to abandon his mill because he could not supply it with logs. See page 133, 4th interrogatory.

15. Farquhar Bethune, Esq., sworn; describes the number of saw mills erected by claimant, one of which he says was calculated to saw 25,000 feet per day; then says that Mr. Sibbald was deprived of the use of his timber and lands by the agents of the Government of the United States—page 136, 3d interrogatory; that the acts of the Government or its agents, were, in his (witness's) opinion, the direct cause of Mr. Sibbald's embarrassments, they deprived him of his means and destroyed his credit; page 137, 10th interrogatory.

16. William J. Mills, assistant bookkeeper, swore, that Wm. D. Acken repeatedly, in my presence, forbid the agents of Mr. Sibbald to cut lumber of any kind from the lands owned by him, *as well as* to forbid many of *the settlers and owners of lands in the vicinity, of cutting lumber to supply the saw mills*—page 142, 3d interrogatory; and that the agents of Mr. Sibbald were annoyed for

more than a year *before the stoppage*. Contracts were entered into *with various citizens* to supply timber *from their lands* in the vicinity, and they *were also stopped, and thousands of logs were left to rot in the woods* by such interference—page 142, 3d interrogatory; and that Mr. Acken, United States agent, asserted, that as the United States had not confirmed the titles to the said lands, he held them to be the property of the Government, and that any person cutting a *single tree* on the lands would be prosecuted by him for the trespass—page 145, 4th interrogatory.

17. John Rodman, Collector of Customs for many years at St. Augustine, fully confirms this evidence, at great length, from pages 149 to 170, that by his instructions he was ordered to seize the timber cut from these lands, that the other agents of the Government were so instructed and actually stopped the cutting of all timber; so that the mills had to be abandoned.—*See page* 150.

18. Thomas Stephens, blacksmith at the mills, swore that he saw the saw logs that were thus seized laying in the woods "ten years afterwards;" that he "knew of an agent of the United States claiming Mr. Sibbald's property, and forbidding the laborers to cut any more timber," threatening if they did not leave directly, he would tie the negroes up and whip them.—*Page* 598. That "the laborers that came in were so terrified that *they would not dare to lift another axe*."—*Page* 298.

19. James Rice, millwright, swore "that he knows of the operatives of said Sibbald being driven off, and prevented them from cutting pine timber on his, the said Sibbald's, land, by an agent of the United States by the name of Acken; that the black laborers came in from the woods where they had been cutting mill logs, saying, that Acken, the agent of the United States, had driven them from the woods by threatening to inflict personal injury by whipping them.—*Page* 285.

B.

The following evidence conclusively establishes that the proposition of the late Secretary of the Treasury as to the timber left standing on the land, as the property of the claimant, cannot be sustained by the testimony.

1. Charles Snowden, the agent of the claimant at the mills, swore as follows, in answer to the fifth interrogatory propounded by the Secretary of the Treasury on the part of the United States: "The mills have gone to ruin; the lands on Mr. Sibbald's grant *have been pillaged* to a great extent by depredators, whom it w s impossible to control, by reason of his property being treated as public property by the Government agents and public authorities."—*Page* 14.

2. George Colt, bookkeeper at the mills, answered that "the mills had gone to ruin; the timber has been cut to a very great extent (pine timber) from Mr. Sibbald's grant, by squatters in the neighborhood of it, they treating it as public lands."—*Page* 116, *5th Int.*

3. Col. Warren answered that "they have been injured to great extent, as persons have been trespassing by cutting the timber for years past."—*5th Int. page* 121.

4. Lewis Fleming, Esq., answered, that "he has reason to believe that considerable timber has been taken off of the 10,000 acre tract by persons who, from the acts of the Government or its agents, have been taught to consider it as public land."—*Page* 130, *5th Int.*

5. Judge Bethune answered, that he believes that in consequence of acts of the Government of the United States, *most of the valuable* pine timber on the mill tract on the St. John's river, *has been destroyed by depredators*, who were taught to consider it as public land, and which depradators cannot be prevented by Mr. Sibbald—page 137, 5th interrogatory.

These answers were given in reply to an interrogatory of the Secretary of the Treasury, on the part of the United States, as follows:

5th Interrogatory. Were the mills of said Sibbald, or his lands, injured, and to what extent, *by reason of his being dispossessed thereof*, or forbidden or *deprived of the use thereof?*

And conclusively controverts the grounds of deduction, made for the timber left standing on the land.

MEMORANDA.

The following is the obvious incontrovertible result of the evidence in the case:

1. That the claimant, as proved by the decision and decree of the Supreme Court, was ejected, dispossessed, and by forcible means deprived of all use of property by which his undertakings thereon were induced, in the construction of saw mills at immense cost, in which his fortune, character, and commercial reputation, were embarked, and that he was prostrated in his various pursuits dependent on the free use and enjoyment of the property thus decided to have been his own by the Supreme Court, and protected by solemn treaty stipulations, while he was exercising the very acts required by these treaty stipulations, thus violated in erecting mills, and that the consequences were directly as follows:

1. The loss and destruction of his saw mills, planing mills, and their appurtenances, machinery, engines, buildings, work shops, in the whole cost thereof, for want of the timber to operate the mills as proved, the mills requiring exceeding a hundred logs per diem.

2. The loss of the use and operation of the same.

3. The ship building commenced, which could not be prosecuted for want of the live oak, pine, and other timber.

4. The contract with the Navy Department for live oak exceeding $300,000 dollars, while the claimant was committed in excessive bonds for its delivery.

5. Damages from Mr. Grice, whom claimant agreed to protect in cutting the timber, (live oak,) and loss of "$16,000 *cash" payments*, "a clear profit."

6. The store that was broken up by the destruction of claimant's business and commercial credit.

7. The vessels bought and chartered sacrificed, and damages resulting to claimant from the latter.

8. The trade under Spanish colors with an advantage of thirty per cent. in duties by the treaty with Spain.

9. The destruction of his commercial credit, as proved to be unlimited previous to the interference, and as his business connection with the most eminent houses show.

10. The extended destruction of his interests at Philadelphia and elsewhere since 1830.

11. The entire real estate sacrificed in Florida by the embarrassments created by the Government, its loss to claimant, also his real estate in Philadelphia, to great extent.

12. The lands given as donations, portions of his own property, under the donation act given to settlers in parcels of 500 to 640 acres as public land.

13. The consequence of the suspension of title declared for the land, all use of it as property being cut off from claimant on a sale or other use, besides the timber needed for his mills, contracts, and ship building.

14. The destruction of the timber or the lands, as proved.

15. The credit and property of claimant being taken, his being impoverished and disabled for years to do other business.

16. His sufferings, wounded sensibility and honor, and the implication of his commercial character.

Since this was prepared & Rep^t Public
been shewn that the Comptroller that
Mr Miller had not the most important part
[illegible] when he examined the case —

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